

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MICHAEL A. WITHERS,

Plaintiff,

vs.

J.P. MORGAN CHASE BANK N.A., a
National Association; SELECT PORTFOLIO
SERVICING, INC., a Utah Corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No: C 14-0351 SBA

DISMISSAL ORDER

On July 11, 2014, the Court issued an Order granting Select Portfolio Servicing, Inc.'s motion to dismiss the complaint. Dkt. 25. Plaintiff was given twenty-one (21) days (i.e., until August 1, 2014) to file a first amended complaint. Id. The Court expressly warned Plaintiff that the failure to timely file a first amended complaint would result in the dismissal of this action without prejudice. To date, Plaintiff has not filed a first amended complaint.

"Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action for failure to comply with any order of the court." Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992). The failure to file an amended complaint as directed by a district court constitutes grounds for dismissal under Rule 41(b). Yourish v. California, 191 F.3d 983, 986 (9th Cir. 1999) ("Under Ninth Circuit precedent, when a plaintiff fails to amend his complaint after the district judge dismisses the complaint with leave to amend, the dismissal is typically considered a dismissal for failing to comply with a court order rather than for failing to prosecute the claim.").

1 “Dismissal is a harsh penalty and, therefore, it should only be imposed in extreme
2 circumstances.” Ferdik, 963 F.2d at 1260. As such, before dismissing an action, the Court
3 must evaluate five factors: (1) the public’s interest in expeditious resolution of litigation;
4 (2) the court’s need to manage its docket; (3) the risk of prejudice to defendants; (4) the
5 availability of less drastic alternatives; and (5) the public policy favoring disposition of
6 cases on their merits. Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002). Dismissal
7 is proper “where at least four factors support dismissal, . . . or where at least three factors
8 ‘strongly’ support dismissal.” Dreith v. Nu Image, Inc., 648 F.3d 779, 788 (9th Cir. 2011).

9 In the instant case, the Court finds that the above-referenced factors weigh in favor
10 of dismissal. With regard to the first factor, “[t]he public’s interest in expeditious
11 resolution of litigation always favors dismissal.” Yourish, 191 F.3d at 990.

12 The second factor also militates in favor of dismissal. “It is incumbent upon the
13 Court to manage its docket without being subject to routine noncompliance of litigants.”
14 Pagtalunan, 291 F.3d at 642; Yourish, 191 F.3d 983, 990 (9th Cir. 1999) (recognizing a
15 court’s need to control its own docket). Plaintiff’s failure to comply with this Court’s Order
16 to amend his pleading has interfered with the Court’s ability to move the litigation forward
17 and has diverted resources away from other cases on the Court’s docket. See Ferdik, 963
18 F.2d at 1261 (noting that non-compliance with a court order diverts “valuable time that [the
19 court] could have devoted to other major and serious criminal and civil cases on its
20 docket.”).

21 The third factor, the risk of prejudice to the defendants, generally requires that “a
22 defendant . . . establish that plaintiff’s actions impaired defendant’s ability to proceed to
23 trial or threatened to interfere with the rightful decision of the case.” Pagtalunan, 291 F.3d
24 at 642. At the same time, the Ninth Circuit has “related the risk of prejudice to the
25 plaintiff’s reason for defaulting.” Id. Here, Plaintiff has offered no explanation for his
26 failure to respond nor is any apparent from the record. These facts also weigh strongly in
27 favor of dismissal. See Yourish, 191 F.3d at 991; Ghazali v. Moran, 46 F.3d 52, 54 (9th
28 Cir. 1995).

1 As to the fourth factor, the Court has already considered less drastic alternatives to
2 dismissal. Plaintiff failed to amend his complaint, notwithstanding the fact that he was
3 given twenty-one days to do so. The Court expressly warned Plaintiff that the failure to
4 timely file a first amended complaint would result in the dismissal of this action. “[A]
5 district court’s warning to a party that failure to obey the court’s order will result in
6 dismissal can satisfy the ‘consideration of [less drastic sanctions]’ requirement.” Ferdik,
7 963 F.2d at 1262.


8 The final factor, which favors disposition of cases on the merits, by definition,
9 weighs against dismissal. Pagtalunan, 291 F.3d at 643 (“Public policy favors disposition of
10 cases on the merits. Thus, this factor weighs against dismissal.”).

11 In sum, the Court concludes that four of the five relevant factors weigh strongly in
12 favor of dismissing this action. Accordingly,

13 IT IS HEREBY ORDERED THAT the instant action is DISMISSED. The Clerk
14 shall close the file and terminate any pending matters.

15 IT IS SO ORDERED.

16 Dated: 8/4/2014


SAUNDRA BROWN ARMSTRONG
United States District Judge